



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 15-07274
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: Leon J. Schachter, Esq.

December 7, 2016

Decision

JUDGE, Martin H. Mogul, Administrative Judge:

Applicant submitted a Questionnaire for National Security Positions (SF 86 Format) on February 20, 2015. On June 6, 2016, after reviewing the application and information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information.¹ The SOR detailed the factual reasons for the action under the Security Guideline C for Foreign Preference and Guideline B for Foreign Influence considerations. Applicant timely answered the SOR and requested a hearing.

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replaced the guidelines found in Enclosure 2 to the Directive prior to September 1, 2006, and a copy of these guidelines was provided directly to the Applicant in this case.

The case was assigned to me on August 24, 2016. The hearing was held by Video Teleconference as scheduled on November 8, 2016. On November 23, 2016, I proposed to the parties by email that this case was appropriate for a summary disposition in Applicant's favor. Applicant did not object. Department Counsel had 10 days to consider the matter and written notice was provided that Department Counsel did not object.

The allegations concerning Guideline C were that on December 21, 2007, Applicant, who is currently 22 years of age, applied for a Japanese passport, even though he was born a United States citizen; that he used his Japanese passport in lieu of his United States passport to travel to another country in approximately 2008; and that he utilized Japanese health care benefits. The allegations concerning Guideline B were that Applicant's mother, sister and several extended family members are citizens and residents of Japan. Based on the record evidence as a whole, I conclude that Department Counsel presented sufficient evidence to establish the facts alleged in the SOR under Guidelines C and B, with the exception that Applicant's sister is currently a resident of the United States.

I also conclude that Applicant presented sufficient evidence to explain, extenuate, or mitigate the facts admitted by Applicant or proven by Department Counsel. I considered that Applicant's Japanese passport was applied for by his parents when he was approximately 13 years of age, to be used on one occasion, and has since been destroyed; that Applicant's father is a United States citizen and retired United States Marine; and that Applicant has been raised as a United States citizen, and consistently showed his loyalty to the United States. Therefore, I conclude that the security concerns are resolved under the following mitigating conditions under Guideline C: AG ¶¶ 11(d) and 11(e); and under Guideline B: AG ¶¶ 8(a) and 8(b).

The concerns over Applicant's history of foreign preference and foreign influence do not create doubt about his current reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered whether or not the favorable evidence outweighed the unfavorable evidence. I also gave due consideration to the whole-person concept. Accordingly, I conclude that Applicant has met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information. This case is decided for Applicant.

Martin H. Mogul
Administrative Judge